IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 1, 2007

PATRICIA AMBROSE v. BLYTHE BATSUK

Appeal from the Circuit Court for Williamson County
No. 04191 Robert E. Lee Davies, Judge

No. M2006-01131-COA-R3-CV - Filed April 30, 2008

This case arose from a low-speed collision in which the plaintiff's car was rear-ended by the defendant's car. The plaintiff claimed that the accident caused her to suffer neck and shoulder injuries, resulting in considerable pain and suffering. The defendant conceded fault for the accident, but denied that the accident had caused the plaintiff any actual injury. The plaintiff attempted to prove causation by offering the deposition testimony of the primary care doctor who had treated her. The trial court excluded the doctor's testimony because he was unable to state that the accident more probably than not caused the plaintiff's physical injuries. The jury returned a verdict for the defendant and the trial court entered judgment thereon. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Randall W. Burton, Nashville, Tennessee, for the appellant Patricia Ambrose.

Julie Bhattacharya Peak, Nashville, Tennessee, for the appellee Blythe Batsuk.

OPINION

I. AN UNFORTUNATE ACCIDENT

On Thursday, May 10, 2001, Patricia Ambrose, the plaintiff, was traveling east on Highway 96 in Franklin, Tennessee. While she was stopped at a red light, her car was struck from behind by a car driven by Blythe Batsuk. Ms. Batsuk testified that her two-year old son, who was sitting in the back sear, was choking on an animal cracker, and while she turned to tend to him, she inadvertently took her foot off the brake. The collision pushed Ms. Ambrose's car half a length forward and smashed the rear bumper of the car against the trunk lid. Ms. Ambrose testified that she was knocked back and forth by the collision, which initially caused a headache. After she drove herself home, she began experiencing acute pain in her shoulder and head.

The day after the accident, Ms. Ambrose went to Dr. William Halford, her primary care physician, with whom she had a previously scheduled appointment. She reported, among other symptoms, that she was experiencing pain in her neck and her shoulder. It appears from the record that she did not inform the doctor that she had been involved in an automobile accident.[1] Dr. Halford had treated Ms. Ambrose for many years for the care and management of fourteen different diagnosed conditions. Her normal practice was to see Dr. Halford every three months or even more frequently for those conditions, and she continued to see him on a regular basis after the accident. She complained of neck and shoulder pain during some of her subsequent appointments, but not all of them.

Due to her complaints of neck pain on this visit, Dr. Halford ordered a cervical x-ray to rule out an unstable condition, such as a fracture or a shifting of the patient's vertebral bodies. The x-ray did not indicate any such condition, but showed some possible degenerative changes. Dr. Halford gave Plaintiff some Tylenol 3 for her pain. Ms. Ambrose testified that the medication reduced her pain somewhat, but that it did not disappear. She returned to her job as a Williamson County Deputy Sheriff on the Monday after the accident. In July of 2001, Ms. Ambrose went back to Dr. Halford and told him that her shoulder and neck were still painful. He ordered an MRI, which did not reveal any physical abnormalities. Since Ms. Ambrose's pain was continuing, Dr. Halford recommended that she undergo physical therapy. She did not begin physical therapy until September of 2002, sixteen months after the accident. She testified that her neck pain finally resolved during the course of physical therapy

II. LEGAL PROCEEDINGS

On May 10, 2002, Ms. Ambrose brought suit against Ms. Batsuk in the General Sessions Court of Williamson County. Her claim was non-suited at one point and was subsequently re-filed. The case was finally tried on March 15, 2004, after which the court entered a judgment on behalf of Ms. Batsuk. Ms. Ambrose filed an appeal to the Circuit Court of Williamson County.

In her complaint, Ms. Ambrose claimed that because of Ms. Batsuk's negligence she suffered "painful personal injuries from which she has incurred and shall continue to incur pain, suffering, undue emotional distress, the loss to participate in and enjoy the pleasures of life, and lost earning capacity, all of which she deserves to be compensated." She asked for $25,000 in compensatory damages as well as special damages for the medical bills she incurred. We note that the collision resulted in $700 worth of damage to Ms. Ambrose's car and that, since Ms. Batsuk paid the $700, property damage is not at issue in this case.

Ms. Ambrose's claim involved allegations of physical injury, so it was foreseeable that expert medical testimony would become an important component of her proof. The court entered a scheduling order which set December 15, 2004, as the deadline for the plaintiff to complete her medical proof. Ms. Ambrose deposed her sole expert witness, Dr. Halford, on that date. Her

[1] At deposition Dr. Halford acknowledged that there was no mention of an auto accident in his notes from Ms. Ambrose's appointment of May 11, 2001, or in his notes from any subsequent appointment. He testified that he usually made very detailed notes, but that it was possible that she told him and he forgot to write it down.

attorney questioned the doctor about his treatment of Ms. Ambrose and asked him several times whether he believed to a reasonable degree of medical certainty that her neck and shoulder pain was caused by the accident. While Dr. Halford declined to answer the question unequivocally, he responded at various times that it was "conceivable," "likely," "a very strong possibility," and "a reasonable conclusion."

Because of the constraints of Dr. Halford's schedule, the deposition had to be adjourned before Ms. Batsuk's attorney had the opportunity to question him. The deposition resumed with the trial court's permission on March 2, 2005. Ms. Batsuk's attorney asked Dr. Halford several times on cross-examination whether the accident caused any of Ms. Ambrose's injuries. He responded that it was possible, but agreed that other conditions might also be responsible. Dr. Halford explained that Ms. Ambrose was a "complicated" patient who had a number of symptoms that were similar and came and went over the course of her treatment. While he thought it was possible that the accident may have contributed to her condition, or worsened an existing condition, he was unable or unwilling to attribute her symptoms to the accident with more certainty or probability.

Ms. Batsuk subsequently filed a motion to strike Dr. Halford as an expert witness since he had been unable to testify within a reasonable degree of medical certainty that the accident caused Ms. Ambrose's pain. Ms. Ambrose filed a response in opposition to the defendant's motion, which included a request for more time to find an additional expert witness in the event the trial court granted Ms. Batsuk's motion.

After reading the challenged deposition in its entirety, the trial court conducted a hearing on the motion to strike, and concluded that "Dr. Halford's testimony will not substantially assist the trier of fact in this cause and must be excluded." The court also denied Ms. Ambrose's request to extend the scheduling order, "[g]iven the time that has lapsed in this cause." On November 14, 2005, Ms. Ambrose filed a motion for reconsideration of the trial court's decision not to amend the scheduling order to allow her to take additional witness testimony. That motion was denied, "because no additional basis had been presented for reconsideration."

Ms. Ambrose also filed a motion to amend her complaint to add $2,652 in medical and doctor bills that she incurred after the accident under Tennessee Code Annotated § 24-5-113. The trial court granted Ms. Ambrose's motion.

The case was tried before a jury on March 8, 2006. The only witnesses to testify were Ms. Ambrose, Ms. Batsuk, and Officer Craig Wright of the Franklin Police Department. Officer Wright testified that he was dispatched to the scene of the accident, where he first asked both parties if they were hurt, and both said they were not. His narrative in the accident report stated "no injury reported at this time." However, Ms. Ambrose testified that when he asked her the question, she said, "well, I have a little headache, but I'll be all right." The officer's short form minor traffic accident report noted "minor rear bumper damage."

Ms. Ambrose testified that she felt fine before the accident, but developed a headache immediately afterward. When she returned home ". . . my shoulder and head wouldn't stop hurting. It was just like a hot poker. It would go up the back of my neck into my head." She testified that

the intensity of the pain declined over time, but that in the sixteen or eighteen months following the accident, certain physical tasks like sweeping, working on the flower beds in her yard, and mowing the lawn with a riding lawnmower became more difficult.

Ms. Ambrose was questioned extensively about her medical history prior to the accident. She testified that she was in a car wreck in 1995 in which she suffered a concussion and a broken foot, had to spend three days in the hospital, and had to undergo therapy for her feet and legs. She also testified that she suffered from several conditions that are known to cause joint and muscle pain, including fibromyalgia, arthritis and carpal tunnel syndrome, as well as from diabetes and high blood pressure. She was treated for pain in her shoulders and neck in 1998, but she testified that the pain she suffered after the accident in 2001 was like nothing she had ever experienced before.

Ms. Batsuk testified that she had come to a complete stop at the light, but that after she turned around to tend to her child, her foot must have come off the brake. She also testified that after the collision Ms. Ambrose got out of her car and that, although Ms. Batsuk tried to apologize, Ms. Ambrose cursed her and said she would sue for everything she had and that she worked for the police department. Ms. Ambrose had denied under questioning during her own testimony that she had spoken harshly to Ms. Batsuk after the accident or had used profane language.

When the plaintiff's proof was concluded, the defense chose not to call any witnesses. The trial court then granted the plaintiff's motion for a directed verdict on the issue of breach of the standard of care. During closing argument, Ms. Ambrose's attorney argued that she was entitled to a monetary recovery from the defendant for the pain she had suffered, her loss of enjoyment of life, and for her reasonable and necessary medical expenses. For her part, Ms. Batsuk admitted fault for the accident, but denied that it had caused Ms. Ambrose any physical injury, pointing out that Ms. Ambrose already suffered from a host of medical conditions prior to the accident and that she had not introduced any medical proof to establish a connection between her subsequent symptoms or medical treatment and the accident.

The trial court then instructed the jury that it was their duty to determine the amount that Ms. Ambrose was entitled to collect for the three elements of damages she alleged, "from zero to whatever amount you think is reasonable for each of those, and then give me a total." After deliberation, the jury found that the plaintiff was entitled to zero dollars for physical pain and suffering, zero dollars for medical care and services to date, and zero dollars for loss of enjoyment of life, resulting in no recovery for Ms. Ambrose. The trial court entered judgment on the jury verdict. Ms. Ambrose filed a motion for a new trial or, in the alternative, to alter and amend the judgment. The motion was denied and this appeal followed.

III. NEGLIGENCE

In order to prevail on a negligence claim, the plaintiff must establish all the elements of the alleged tort. Those elements have been described as follows: (1) a duty of care owed by defendant to plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) an injury or loss; (4) cause in fact; and (5) proximate, or legal, cause. *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995); *McClenahan v. Cooley*, 806 S.W.2d 767, 774 (Tenn. 1991).

The trial court granted Ms. Ambrose a directed verdict on the question of whether Ms. Batsuk's conduct breached the applicable standard of care, and she herself admitted fault for the accident. Thus, the first two elements listed above have been conclusively established. The elements involving injury and causation are therefore the only ones relevant to this appeal. We will focus on cause in fact, since without cause in fact, there can be no proximate or legal cause. *Waste Management v. South Central Bell*, 15 S.W.3d 423, 430 (Tenn. Ct. App. 1997). "Causation, or cause in fact, concerns the relationship between the defendant's conduct and the Plaintiff's injuries." *Hamblen v. Davidson,* 50 S.W.3d 433, 440 (Tenn. Ct. App. 2000).

IV. THE EXCLUSION OF DR. HALFORD

Ms. Ambrose challenges the trial court's decision not to admit the testimony of Dr. Halford. The decision to admit or to exclude evidence is generally considered to rest within the sound discretion of the trial court. *State v. Ballard*, 855 S.W.2d 557, 562 (Tenn. 1993); *Heath v. Memphis Radiological Professional,* 79 S.W.3d 550, 558 (Tenn. Ct. App. 2001); *Wright v. Quillen*, 909 S.W.2d 804, 809 (Tenn. Ct. App. 1995). In particular, ". . . questions regarding the admissibility, qualifications, relevancy and competency of expert testimony are left to the discretion of the trial court. The trial court's ruling in this regard may only be overturned if the discretion is arbitrarily exercised or abused." *McDaniel v. CSX Transp.,* 955 S.W.2d 257, 263-264 (Tenn. 1997).

The admissibility of expert testimony is governed by the Tennessee Rules of Evidence 702, which reads:

> If scientific, technical or other specialized knowledge will substantially assist the trier of fact to understand evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.

Rule 702 differs from the corresponding Federal Rule in that the Federal Rule simply requires that the expert's opinion "assist the trier of fact to understand," while Tennessee raises the bar higher by requiring that it substantially assist the trier of fact. *See Bara v. Clarksville Memorial Health Systems*, 104 S.W.3d 1, 9 (Tenn. Ct. App. 2002). This means that to be admitted in Tennessee state courts, the probative force of the testimony must be stronger than the federal courts require. *McDaniel v. CSX Transp.,* 955 S.W.2d 257 at 264.

The testimony of an expert as to causation does not substantially assist the trier of fact if that testimony is speculative in nature. *Hunter v. Ura*, 163 S.W.3d 686, 704 (Tenn. 2005). For a physician's testimony to be admissible, it must indicate reasonable certainty, and not a mere likelihood or possibility. *Primm v. Wickes Lumber*, 845 S.W.2d 768, 771 (Tenn. Ct. App. 1992); *Porter v. Green*, 745 S.W.2d 874, 878 (Tenn. Ct. App. 1987). It is proper to exclude expert testimony if it is based on mere possibility. *Hunter v. Ura*, 163 S.W.3d at 703; *Kilpatrick v. Bryant*, 868 S.W.2d 594, 602 (Tenn. 1993).

Causation is a matter of probability, not possibility. "[P]roof of causation equating to a 'possibility,' a 'might have,' 'may have,' 'could have' is not sufficient, as a matter of law, to establish the required nexus between the plaintiff's injury and the defendant's tortious conduct by a preponderance of the evidence . . . ." *Kilpatrick v. Bryant*, 868 S.W.2d 594, 602 (Tenn. 1993). "A doctor's testimony that a certain thing is possible is no evidence at all. His opinion as to what is possible is no more valid than the jury's own speculation as to what is or is not possible. The mere possibility of a causal relationship, without more, is insufficient to qualify as an admissible expert opinion." *Bara,* 104 S.W.3d at 10 (citing *Primm v. Wickes Lumber Co.,* 845 S.W.2d at 770-71).

Dr. Halford testified at deposition that his patient notes did not indicate that Ms. Ambrose informed him that she had been in an accident, and his testimony suggests that he only became aware that such an accident had occurred when he was contacted by Ms. Ambrose's attorney in 2004. He had been treating Ms. Ambrose for numerous medical conditions, including a previous episode of neck pain, and, since he had not been told about an accident, he had no reason initially to draw a connection between her complaint of neck and shoulder pain and any traumatic event. Even at the deposition, he stated he had no information about the details of the accident, *e.g.*, the force with which the vehicles collided. However, since his patient now stated that she felt some of her pain and other symptoms developed after the accident, he was acting as her advocate, and it was possible that the accident exacerbated her condition.[2]

Under questioning by Ms. Ambrose's attorney, he indicated that a connection between the accident and Ms. Ambrose's pain was possible or even likely. But under cross-examination he retreated from those earlier responses, his words indicating that he felt uncertain as to the actual truth of the matter. The trial court reviewed the deposition and found it equivocal. The trial court stated "this Court finds that Dr. Halford cannot testify with a reasonable degree of medical certainty that the May 10, 2001 accident caused Plaintiff any injury or aggravated any pre-existing condition. Thus, Dr. Halford's testimony will not substantially assist the trier of fact in this cause and must be excluded."

We have closely read Dr. Halford's deposition, and in light of the doubts he himself expressed as to the causes of the Mr. Ambrose's injuries, we cannot say that the trial court abused its discretion in excluding his testimony.

V. THE COURT'S SCHEDULING ORDER

The plaintiff's second argument on appeal is that the trial court erred in refusing to allow her additional time to find and depose an additional expert witnesses after it struck the testimony of Dr. Halford. The timing of the deposition of witnesses, expert and otherwise, is governed by pre-trial scheduling orders. A pre-trial scheduling order can be modified only by the trial judge. "A schedule once ordered shall not be modified except by leave of the judge upon a showing of good cause." Tenn. R. Civ. P. 16.01.

---

[2]He did testify with reasonable certainty that some conditions, e.g. paresthesias in her hands and her depression, were not caused by the accident.

Ms. Ambrose did not request the additional time to identify and depose another expert until after the deadline for completing depositions had already passed. As a general rule, actions to which a deadline has been attached should be completed before the deadline is reached. *Sizemore v. United Physicians Risk Retention Group*, 56 S.W.3d 557, 566 (Tenn. 2001). However, a possible exception to the general rule is found in Rule 6.02 of the Tennessee Rules of Civil Procedure:

> When by statute or by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion, (1) with or without motion or notice order the period enlarged if request is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done, where the failure to act was a result of excusable neglect.

Under Rule 6.02, the decision to extend or not extend the time within which a party is allowed to act always remains within the sound discretion of the trial court. *Douglas v. Estate of Robertson*, 876 S.W.2d 95, 97 (Tenn. 1994).

In the present case, the plaintiff argues that since she did not know whether or not the trial court was going to strike Dr. Halford's testimony, any delay in requesting an extension constituted excusable neglect and that the grant of such an extension would not have prejudiced the defendant because at the time the trial court ruled, the case had not yet been set for trial. However, even if, *arguendo*, we agreed with those contentions, the decision whether or not to give the plaintiff additional time to depose another expert still remained within the trial court's sound discretion. This is because even if a party files a timely motion to extend the time for such action, the court may still be able to deny such a motion in the exercise of its discretion. Thus, we may not reverse the trial court's order absent an abuse of that discretion.

> A trial court abuses its discretion only when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining. The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court."

Williams v. Baptist Memorial Hospital, 193 S.W.3d 545, 551 (Tenn. 2006). *See also Myint v. Allstate Insurance Co.*, 970 S.W.2d 920, 927 (Tenn. 1998); *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996).

We note that several scheduling orders extending the time for discovery were earlier entered in this case, and that the plaintiff did not begin her deposition of Dr. Halford until the very last day authorized by the scheduling order then in effect. We further note that the accident occurred on May 10, 2001, and that when she filed suit it should have been readily apparent to the plaintiff that she would need medical proof to establish causation. *See Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d 278, 283 (Tenn. 1991). Thus, it appears to us that Ms. Ambrose had ample time in which to secure expert witness testimony, and yet she chose not to begin deposing Dr. Halford until December 15, 2004, over three and a half years after the accident.

The trial court did not abuse its discretion by declining to grant the plaintiff her requested extension.

VI. THE MEDICAL BILLS

The plaintiff's final issue involves the medical bills that she included with her amended complaint. By filing those medical bills, in the total amount of $2,562, she hoped to take advantage of the presumption set out in Tenn. Code Ann. § 24-5-113, that such bills, when they are itemized and attached as an exhibit to complaints in personal injury actions, and when they total less than $4,000, create a prima facie presumption that the expenses incurred were necessary and reasonable.

Ms. Ambrose appears to misapprehend the presumption created by the statute. Essentially, if a plaintiff makes a claim for medical expenses in compliance with the procedural requirements of the statute, there is no need for more specific proof regarding the necessity or reasonableness of those expenses. However, the presumption does not alleviate the need to prove that the condition requiring the medical treatment was caused by the defendant's conduct. There is nothing in the language of Tenn. Code Ann. § 24-5-113 addressing the requirement that plaintiff prove causation. Ms. Ambrose was required to prove that her claimed damages, including the medical bills she submitted, were caused by the accident with Ms. Batsuk.

Despite the introduction of her medical bills, the jury found that the plaintiff was not entitled to any recovery for any of her claimed damages, including medical care and services. The jury's award of zero damages indicates that the jury had substantial doubts that her claimed injuries, and the damages resulting therefrom, including the medical bills, were caused by the low-impact collision. The jury found that the plaintiff had not suffered any damages that could be attributed to the accident of May 10, 2001.

Ms. Ambrose argues on appeal that there was no material evidence to support the jury verdict, and therefore that the Court of Appeals should reverse that verdict. Under Rule 13(d) of the Tennessee Rules of Appellate Procedure, "Findings of fact by a jury in civil actions shall be set aside only if there is no material evidence to support the verdict." Our Supreme Court has further elaborated on the above standard of review:

> Our review must be governed by the rule, safeguarding the constitutional right of trial by jury, which requires us to take the strongest legitimate view of all the evidence to uphold the verdict, to assume the truth of all that tends to support it, to discard all to the contrary, and to allow all reasonable inferences to sustain the verdict.

Poole v. Kroger Co., 604 S.W.2d 52, 54 (Tenn. 1980) (citing *D. M. Rose & Co. v. Snyder,* 206 S.W.2d 897, 901 (Tenn. 1947). When a trial court approves a jury verdict, appellate courts may only review the record to determine whether it contains material evidence to support the jury's verdict. *Reynolds v. Ozark Motor Lines, Inc.*, 887 S.W.2d 822, 823 (Tenn.1994); *Whitaker v. Harmon*, 879 S.W.2d 865, 867 (Tenn. Ct. App.1994). Appellate courts do not reweigh the evidence or consider where the preponderance lies. *Truan v. Smith*, 578 S.W.2d 73, 74 (Tenn. 1979); *Benson v. Tennessee Valley Elec. Coop.*, 868 S.W.2d 630, 638-39 (Tenn. Ct. App. 1993).

The evidence in the case before us showed that the collision that gave rise to the action was at a relatively low speed. Officer Wright's testimony as to the damage he observed, photos of the rear of Ms. Ambrose's car that were entered into evidence, and Ms. Batsuk's testimony that she took her foot off the brake after being stopped at a traffic all support the conclusion that they physical impact was not severe.

The plaintiff's own testimony established that at the time of the accident she was already under continuing treatment for a host of medical problems. Her first medical appointment after the accident had already been scheduled and the record suggests that she did not even discuss the accident with the doctor. That appointment and many others focused on a number of symptoms, some of which were undisputably related to pre-existing conditions.

While the plaintiff may have had some appointments solely for diagnosis or treatment of neck and shoulder pain, she acknowledged that she had previously suffered from pains in those areas. Thus, there was no proof, aside from her own testimony, that the cause of her pain was the automobile accident.[3] When we take the strongest legitimate view of all the evidence that tends to uphold the verdict, we find that the jury was entitled to conclude that the medical bills submitted by the plaintiff were incurred for treatment of her pre-existing conditions, and not for treatment of any injury caused by the defendant.

We note that there is no inherent contradiction between a verdict that incorporates both a finding that a defendant has breached the applicable standard of care, or been responsible for an accident, and a conclusion that the plaintiff is not entitled to recovery because her or she has failed to prove injury or causation.

> A plaintiff in a personal injury action such as this "must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. . . . When a person is injured by the negligence of another, "in order for damages to be recoverable, the plaintiff must prove that these damages were a proximate and natural consequence of the tort."

Hutchison v. Rutt, No. M2006-022255-COA-R3-CV, 2008 WL 539062, at * 3 (Tenn. Ct. App. Feb. 25, 2008) (citations omitted). Even summary judgment or a directed verdict against the defendant on breach of the standard of care or fault for the accident does not establish causation for the injury

---

[3] In all but the most obvious of cases, the cause of a medical condition must be established by the testimony of a medical expert. *Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d at 283; *Smith v. Empire Pencil Co.,* 781 S.W.2d 833, 835 (Tenn. 1989); *Miller v. Choo Choo Partners*, 73 S.W.3d 897, 901 (Tenn. Ct. App. 1992). Consequently, Ms. Ambrose was required to prove, through expert medical testimony, that the physical injuries and resulting damages she claimed were caused by the accident. Because the trial court found Dr. Halford's testimony inadmissible and declined to grant Ms. Ambrose more time to find another medical expert, she did not present expert evidence on causation. While Ms. Batsuk would have been entitled to summary judgment had such a motion been made, the case proceeded to trial, and Ms. Ambrose testified about her symptoms and condition and that they began or were exacerbated after the accident.

claimed by the plaintiff. *Dixon v. Cobb*, No. M2006-00850-COA-R3-CV, 2007 WL 2089748, at * 5 (Tenn Ct. App. July 12, 2007) (citing *McDonald v. Petree*, 409 F.3d 724 (6th Cir. 2005). Jury verdicts of zero damages where the plaintiff's fault for an accident has been conclusively established have been upheld in a number of Tennessee cases. *See, e.g., Newsom v. Markus*, 588 S.W.2d 883 (Tenn. Ct. App. 1979); *Dixon v. Cobb*, 2007 WL 2089748; *Vaughn v. Cunningham*, No. E2004-03001-COA-R3-CV, 2006 WL 16321 (Tenn. Ct. App. Jan. 4, 2006) (no Tenn. R. App. P. 11 application filed).

VII.

The judgment of the trial court is affirmed. We remand this case to the Williamson County Circuit Court for any further proceedings necessary. Tax the costs on appeal to the appellant, Patricia Ambrose.

_____

PATRICIA J. COTTRELL, JUDGE